



SBPM



Tender name The de-bushing in Sefikile area next to Makuka Secondary School

TENDER NAME: The de-bushing in Sefikile area next to Makuka Secondary School

TENDER NUMBER: SBPM-SM-0194

TECHNICAL: Gontse Sekudu

COMMERCIAL: Seleke Jerry Motimele

Date: 30 July 2022

Enquiry Number: SBPM - SM- 0194

Enquiry For: Tender Name: The de-bushing in Sefikile area next to Makuka Secondary School

Dear Sir / Madam

ENQUIRY: INVITATION TO SUBMIT AN OFFER for The de-bushing in Sefikile area next to Makuka Secondary School, **You are hereby invited to submit an offer, at your own costs, subject to the terms and conditions contained in Appendix E for the scope of work, which is attached hereto, to Siyanda Bakgatla Platinum Mine.**

In order to submit a proposal, you should sign and submit your tender documents in a sealed envelope with the reference number on the envelope. Please note that documents not submitted in a sealed envelope will not be considered.

The closing date for the submission of offers shall be on the 08 August 2022 at 12h00. The offer must be handed in at the main store's offices at Siyanda Bakgatla Platinum mine.

Please note that no late proposals will be considered.

Any deviations from our technical or commercial specifications/requirements must be stated.

Siyanda Bakgatla Platinum mine shall not be bound to accept the lowest or any proposal.

All enquiries may be addressed to the undersigned and technical queries must be addressed to Mr Spears Molifi on 014 786 1105 or email: gontsethalithah.sekudu@siyandaplatinum.com

NB, please note that compulsory site briefing meeting will be held on 03 August 2022 Time 10H00 at Sefikile Hall

Seleke Jerry Motimele | Senior Technical Buyer

Direct Tel | +27 (0) 14 786 1334

Email seleke.motimele@siyandaplatinum.com

website | www.siyandaplatinum.com

Ref: SBPM – SM – 0194 The de-bushing in Sefikile area next to Makuka Secondary School

REQUEST FOR PROPOSAL DOCUMENTS

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ANNEXURE A

REQUEST FOR PROPOSAL: SBPM-SM -0194

SCOPE OF Work: Structural Repairs as per 2021 SIMM Report (Surface Infrastructure)

1. DESCRIPTION OF SERVICES TO BE SUPPLIED

2. PRICE BASIS

2.1 Bidders shall quote prices that exclude Value Added Tax but include all other costs applicable to the work stipulated in Annexure B.

2.2 Bidders shall quote as stated in the Questionnaire (Annexure C).

3. PAYMENT

Bidders shall, as requested in paragraph 2 of the Questionnaire (Annexure C), submit payment terms and details.

4. DISCOUNT

Bidders shall, as requested in paragraph 3 of the Questionnaire (Annexure C), indicate whether they offer any settlement discount.

5. PROPOSAL DOCUMENTS

Tender documents (i.e., Annexure C and D) must be completed in black ink and any amendments to the tender documents, whether erasures or by means of correction fluid (e.g., Tippex), must be initialled by the Bidder.

Note: Two copies of the documents shall be submitted to SBPM.

6. CONSULTATION PRIOR TO SUBMISSION OF A PROPOSAL

Bidders shall consult with the under-mentioned officials of SBPM should there appear to be any discrepancy, ambiguity or uncertainty pertaining to the meaning or effect of any description, dimension, quality, quantity, or any other information contained in this request for tender.

Official	Location	Telephone No	Expertise
Jerry Motimele	Procurement	(014) 786 1334	Commercial
Gontse Sekudu	Social Performance Manager	(014) 786 1105	Technical

7. CONDITIONS OF CONTRACT

The terms and conditions applicable to any Contract that may result from this request for proposal are stated in SBPM’s General Terms and Conditions SB00 (Annexure E)

8. VALIDITY PERIOD OF PROPOSAL

The period during which Siyanda Bakgatla Platinum Mine shall have the right to accept a tender without any right of withdrawal on the part of the Bidder shall be ninety (90) days from the date on which proposals are due. After such period a bidder may withdraw his tender if he has not been notified of its acceptance.

9. CONFLICT OF INTEREST

Bidders shall, as requested in paragraph 10 of the Questionnaire (Annexure C), declare any situation or relationship vis a vis any SBPM official(s) which may be reasonably construed as a conflict of interest.

Siyanda Resources / SBPM in its sole discretion shall decide on a suitable course of action. Siyanda Resources / SBPM reserves all its rights including but not limited to compensation for damages, should a Bidder fail to make any declaration of a conflict of interest.

10. GENERAL

Failure to comply with the stipulations of this request for tender may lead to disqualification of a proposal.

11. CLOSING DATE AND TIME

Proposals are due on **08 August 2022 at 12h00** and shall be submitted to SBPM in a sealed envelope, addressed as follows:

Siyanda Bekgatla Platinum Mine
 Supply Chain Management
 Blackwell Highway
 Swartklip
 0370

Attention: Jerry Motimele
 (RFT: SBPM-SM-0194)

Proposals shall be placed in the “Tender Box” at the Main Stores Office situated at the mine premises in Swartklip at SBPM. It is the responsibility of the bidder to ensure that the posted proposal is mailed insufficient time to reach Supply Chain Management before the closing date for submissions.

ANNEXURE B

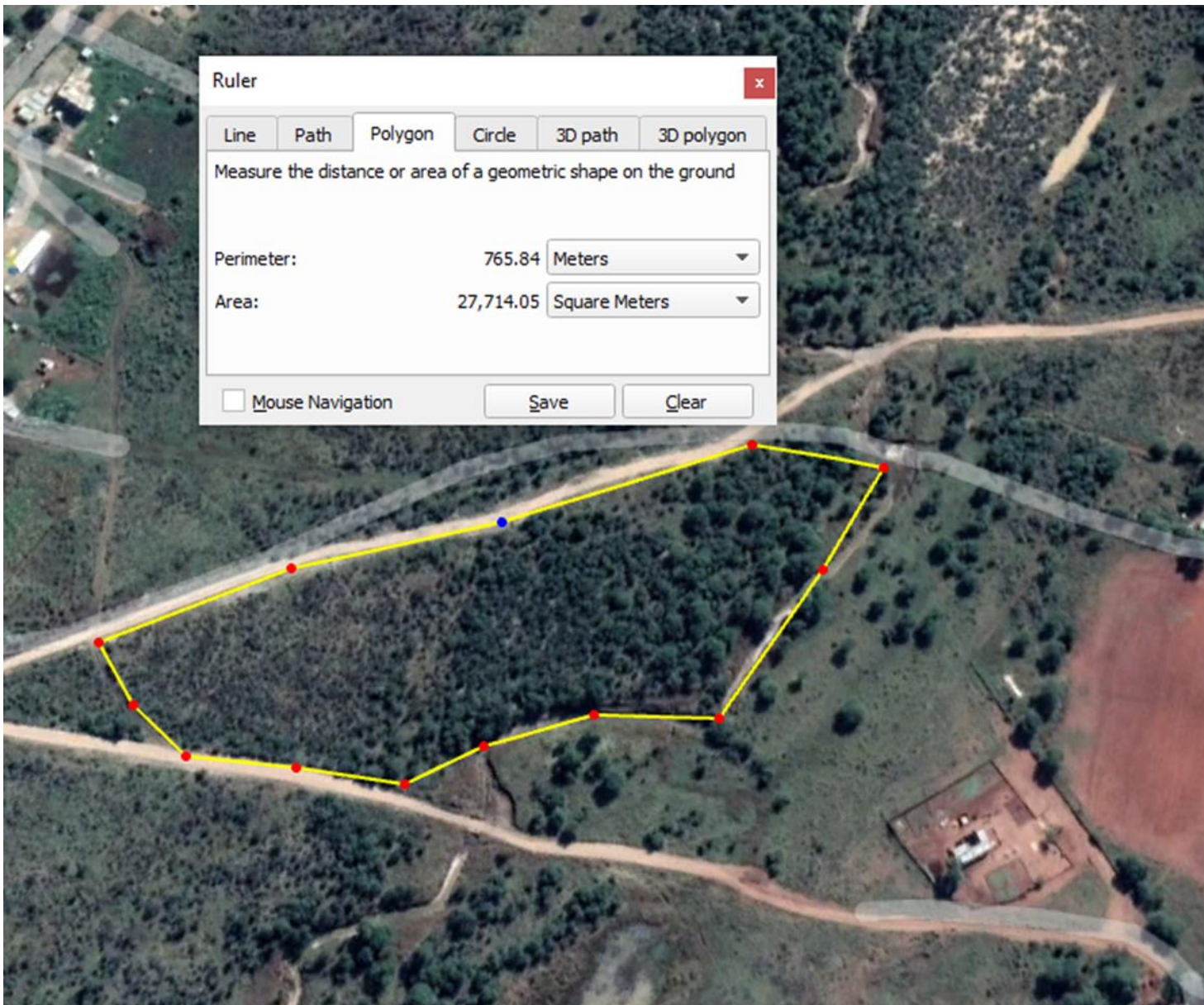


1. Background

SBPM is located on the farm Swartklip 405 KQ, Swartklip, Limpopo Province.

The mine needs to assist the Sefikile local community to de-bushes the area indicated below to make the area safe for the children attending the Makuka High school.

Total of 7,65 ha require de-bushing



2. Scope of work.

Use the required yellow machinery equipment to remove the trees and bushes in the area indicated above.

3. Procurement

Siyanda procurement will oversee the procurement proses.

4. Construction and execution of projects

- Arrange a kick-off meeting for each project.
- Inspected area completion.

5. Responsibilities, accountabilities, liabilities, and guarantees

The successful contractor makes sure the operator area license for the equipment that will be used for the de-bushing operation
Demarcate area where no traveling can take place during the de-bushing period

6. Code of practices (COP's)

Siyanda Bakgatla Platinum code of practice (if available and where applicable) will be made available to the successful Specialised Service Provider on request for detailed design, implementation, and compliance where applicable.

7. Standard operational procedures (SOP's)

ANNEXURE C

QUESTIONNAIRE

1. PRICE BASIS

Bidders shall indicate whether the prices quoted in the Schedule of Prices (Annexure D):

1.1 excludes VAT.

Yes No

1.2 include all costs applicable to the goods/work stipulated in the specification (Annexure B);

Yes No

1.3 exclude the settlement discount offered as per paragraph 3 of this annexure; and

Yes No

1.4 is fixed provided a contract is placed within the validity period as stipulated in paragraph 4 of this annexure.

Yes No

2. PAYMENT

2.1 Bidders shall indicate whether they accept the terms of payment of SBPM as stipulated in clause 8 of Sample SBPM Service Contract.

Yes No

If “no”, please specify the payment terms required.

2.2 Bidders shall submit the following details:

2.2.1 State the preferred means of payment.

Electronic transfer

2.2.2 State to whom payment is to be made.

Business Name	
Postal Address	
Physical Address	
Contact Person	
Designation	
Facsimile Number	
Telephone Number	
Banking / Financial Institution	
Branch Name	
Branch Code	
Account Number	
Account Type	
Account Name	
VAT Registration Number	
* Compensation Fund Number	

** Attached with your tender, please send your proof of locality.*

3. DISCOUNT

Bidders shall stipulate the settlement discount offered as well as the number of days required to qualify for the discount.

Settlement discount: _____ % _____ days.

4. VALIDITY PERIOD OF TENDER

Bidders shall stipulate the validity period of their tender. SBPM requires a validity period of ninety (90) days].

_____ days.

5. CONDITIONS OF CONTRACT

Bidders shall indicate whether they accept the General Terms and Conditions SBPM 001 rev 00 (Annexure E) and the conditions as contained in the sample SBPM Service Contract.

Yes No

If "no", please specify the amendments required.

6. SUB-CONTRACTING

Bidders shall indicate in detail to what extent use will be made of sub-contractors.

NAME OF SUBCONTRACTOR		
ADDRESS OF SUBCONTRACTOR		



CONTACT PERSON		
DESIGNATION		
TELEPHONE NUMBER		
FACSIMILE NUMBER		
NATURE OF WORK		
CONTRACT VALUE (±)		

(Please make a copy of this page if more than two (2) sub-contractors will be used).

7. QUALITY ASSURANCE

7.1 Bidders shall indicate what Quality Assurance System is being used by their company and, if applicable, sub-contractors.

7.2 Bidders shall (with reference to their Quality Assurance System) submit, as part of their proposal, a copy of the latest external audit report.

8. COMPLIANCE TO SPECIFICATION

Bidders shall indicate whether the goods / work offered comply with the specification stipulated in Annexure B.

Yes No

If “no”, please specify the deviations.



9. GUARANTEED DELIVERY / LEAD TIMES

Bidders shall submit as part of their proposal a realistic lead time for the supply of goods as stipulate in Annexure B.

_____ days / weeks

10. CONFLICT OF INTEREST (MUST BE COMPLETED)

Bidders shall declare any situation or relationship vis a vis any SBPM official(s) which may be reasonably construed as a conflict of interest.

11. REFERENCES (MUST BE COMPLETED)

Bidders shall state the names of major purchasing organizations to which their company supplied similar goods/work.

Name of Company		
Contact Person		
Designation		
Telephone Number		
Facsimile Number		



- *Attach list of reference if more than two (2)*

SIGNATURE:

**NAME OF SIGNATORY:
(PRINT)**

_____ in his capacity as

**DESIGNATION OF SIGNATORY:
(PRINT)**

_____ who warrants his authority to sign on behalf of

NAME OF BIDDER:

DATE:

=====



Schedule of Prices

ANNEXURE E

SIYANDA BAKGATLA PLATINUM MINE GENERAL TERMS AND CONDITIONS

These Terms and Conditions shall govern the supply of Goods and Services to the Company by the Supplier under a Purchase Order, from time to time. For any variation to these conditions to be effective, the variation must be in writing and signed by the Company.

1. Definitions

In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

- 1.1 “Company” means the agent of the Company, namely: Siyanda Bakgatla Platinum Mine Proprietary Limited (Registration Number: 2016/228893/07), a private company with limited liability duly incorporated under the law of the Republic of South Africa.
- 1.2 “Agreement” means the Purchase Order, and the Terms and Conditions together with all documents attached to
- 1.3 the Terms and Conditions or incorporated into them by reference.
- 1.4 “Business Day” means a calendar day ending at 17h00, other than a Saturday, Sunday, or public holiday in the
- 1.5 the Republic of South Africa.
- 1.6 “Company” means Siyanda Bakgatla Platinum Mine Proprietary Limited (Registration Number 2016/228893/07) and
- 1.7 “Company’s Policies” means the Company’s policies and procedures relating to its business and operations, available at www.siyandanplatinum.co.za and on request from the Company, as amended from time to time, and which are incorporated into these Terms and Conditions by reference.
- 1.8 “Goods” means the goods or equipment specified in the Purchase Order (if any).
- 1.9 “Income Tax Act” means the Income Tax Act No. 58 of 1962, as amended from time to time.
- 1.10 “Losses” means damages, costs, charges, expenses, penalties, interest, fines, and other losses, howsoever arising in law.
- 1.11 “Price” means the price for the Goods and/or Services stated or calculated in the Purchase Order.
- 1.12 “Purchase Order” means the request or order from the Company to the Supplier in any written format considered appropriate by the Company to supply Goods and/or Services and which specifies at a minimum”
 - (i) a description of the Goods and/or Services,
 - (ii) the Price for the Goods and/or Services,
 - (iii) the Site/s for delivery and
 - (iv) the delivery date on which the Goods are to be provided and/or the Services are to be rendered (“Delivery Dates”).
- 1.13 “Parties” means the Company and the Seller
- 1.14 “Seller” means a natural or legal person
- 1.15 “Services” means the services or works described in the Purchase Order.

- 1.16 "Site" means the area specified in the Purchase Order for the delivery of the Goods and/or the performance of the Services.
- 1.17 "Specifications" means the technical, commercial, and other specifications, standards, and/or performance requirements applicable to the Goods to be supplied and/or the Services to be rendered, detailed in the Purchase Order, or attached as an annexure to these Terms and Conditions (if applicable).
- 1.18 "Supplier" means the person, firm, or company to whom the Purchase Order is addressed.
- 1.19 "Terms and Conditions" means these terms and conditions, together with all documents attached to the Terms and Conditions or incorporated into them by reference.

2. Supply of Goods and/or Services:

- 2.1 No Services are to be rendered and/or Goods delivered to the Company unless a Purchase Order is placed by the Company. All Purchase Orders shall be subject to the Terms and Conditions set out herein, save to the extent that any of these Terms and Conditions have expressly been varied in the Purchase Order.
- 2.2 The Supplier agrees to supply the Goods and/or render the Services described in the Purchase Order, to the Company, in accordance with the provisions set out in this Agreement.
- 2.3 No order, no work, and no pay

3. Agent and Independent Contractor:

- 3.1 All rights and obligations in this Agreement shall be those of the Parties and no liability shall accrue to the Agent. The Parties agree that the Agent shall be entitled to exercise all the Company's rights and perform all its obligations in terms of this Agreement, acting as an agent on behalf of the Company.
- 3.2 The Supplier acts as an independent contractor and not as an agent of the Company in performing its obligations in terms of this Agreement.

4. Commencement and duration:

Unless specified otherwise in writing, this Agreement shall commence on the date on which the Purchase Order is given to and accepted by the Supplier, and shall continue until the Goods and/or Services have been provided by the Supplier and paid for by the Company; provided that:

- 4.1 if the Purchase Order is contemplated to endure for a specific term, then the Agreement shall terminate on the agreed date.
- 4.2 if the Purchase Order is contemplated to be a once-off delivery of Goods, then the Agreement shall terminate on the date of the delivery of the Goods; or
- 4.3 if the Purchase Order is contemplated to continue indefinitely, then it shall be terminable by either Party on 30 (thirty) days written notice to the other Party.

5. Variations:

The Company may at any time before the supply of the Goods and/or Services, by written notice, vary the type or nature of or Specifications applicable to the Goods and/or Services. The value of all Goods or Services which are no longer required by the Company after such variation will be deducted by the Company from the Price and the cost of all extra Goods and/or Services will be added by the Company to the Price.

- 5.1 Unless the contrary is recorded in writing and signed by an authorized representative of the company, every contract of purchase between the Company and Seller shall be governed by these terms, which shall override any terms and conditions purported to be imposed by the Seller.

52 The parties hereto shall be obliged to replace the invalid provision with an alternative provision having similar economic consequences, provided that such replacement does not lead to a material alteration.

6. Quality of Goods and/or Workmanship:

The Supplier warrants that it shall -

- 6.1 In the event that it is providing Services, perform the Services in accordance with the provisions of this Agreement with due care and skill and to best practice standards of diligence, skill, care, and efficiency to be expected of a competent supplier providing services of a similar nature to the Services as set out in this Agreement.
- 6.2 ensure that the Services are performed and/or that the Goods are supplied in compliance with all relevant laws, regulations, rules, codes, and standards and the lawful directions of any public, governmental, municipal, or other authorities in any way applicable to the Goods and/or Services.
- 6.3 pay any fees, charges, levies, and taxes imposed by a government entity in relation to the Goods and/or Services and indemnify the Company against all liability in respect of those fees, charges, taxes (including withholding taxes), and levies.
- 6.4 ensure that the Goods and/or Services provided comply with the Specifications and are fit for their intended purpose and that the Goods, (if applicable), are free from all defects and imperfections.
- 6.5 Ensure that every item of plant, machinery, or vehicle used by the Supplier in performing the Agreement is licensed, registered, equipped, maintained, insured, and used so that it does not endanger the health and safety of any person, cause damage to any property, or cause environmental harm, damage, or nuisance to the public.
- 6.6 provide sufficient and competent personnel (holding any required license or qualification) necessary for and incidental to the provision of the Goods and/or Services.
- 6.7 to the extent that the Supplier will be providing Services, ensure that the Supplier's personnel have the appropriate level of skill and experience to perform the Services. For the avoidance of doubt, it is expressly recorded that no employment relationship will come into existence between the Company and any of the Supplier's personnel, it is recorded that the Supplier's personnel are and will always during the term of this Agreement, be in the employ of the Supplier and the Supplier will be responsible for remuneration, costs and expenses and all other matters relating to the Supplier's personnel; and 6.8. comply with the Company's Policies.

7. Warranty:

The Supplier shall rectify at its expense,

- (i) Any Services or Goods which fail to comply with the Specifications or the requirements of clause 7, within the warranty period specified in the Purchase Order [Note: Should we not provide for a specific remedy period within this clause?] and/or
- ii) Any defect discovered in any of the Goods supplied, within the warranty period specified in the Purchase Order. If the Supplier fails to rectify a defect and/or fails to comply with the requirements set out in this clause and clause 7 respectively, the Company may without prejudice to its other rights, rectify the defect and/or Service failure and the costs incurred in doing so will be a debt due from the Supplier to the Company and may be set off against any other amount due and payable by the Company to the Supplier under this Agreement.

8. Protection:

The Supplier must protect the Goods from loss or damage arising from any cause, and ensure that the Goods are appropriately packaged, handled, and transported to the Site to prevent damage while in transit or storage. The Supplier must ensure that delivery documents accompany the Goods to the Site and bear the Purchase Order number.

9. Time for Supply:

- 9.1 The Supplier must supply the Goods and/or Services at the Site and by the

Delivery Dates specified in the Purchase Order unless an alternative supply point or extension of time is approved by the Company in writing. Any costs or losses suffered by the Company because of delays shall be the responsibility of the Supplier.

- 9.2 Prior to supply of the Goods and/or Services, the Company may delay the Delivery Date referred to in the Purchase Order to a later date on written notice to the Supplier but cannot accelerate the Delivery Date without the approval of the Supplier, which approval may not be unreasonably withheld.

10. Passing of Property and Risk:

Title to the Goods shall pass to the Company upon the earlier of payment for the Goods and delivery of the Goods to the Site, provided that the Supplier bears the risk of loss or damage to the Goods until they are delivered to the Site, have met all the criteria set out in clause 7, have been installed and commissioned, and if applicable, the provisions of clause 18 below have been complied with. The Supplier warrants that it is entitled to transfer title to the Goods to the Company and that title to the Goods will be free and clear of all liens, restrictions, reservations, security interests, and encumbrances.

11. Access, Safety, Health, and Environmental:

- 11.1 The Supplier must give the Company reasonable notice prior to seeking access to the Site and/or any other Company site. Before being permitted to enter any Company Site/s the Supplier and its employees, contractors, and agents must, if the Company so requests, attend all briefings and inductions required by the Company. The Supplier shall and shall procure compliance by its employees or agents with the Company's Policies and such other requirements as the Company may require pursuant to the provisions of the Occupational Health and Safety Act, Act 85 of 1993 and/or the Mine Health and Safety Act, Act 29 of 1996, to regulate the Supplier's access to and presence on the Site.
- 11.2 The Supplier must comply with the Company's Policies and when on Site must Comply (and ensure its employees, contractors, and agents comply) with all South African legislation, regulations, by-laws, and any guidelines relating to health, safety, and the environment, and the Company's reasonable Instructions, policies, procedures, standards, directives, and any other requirements with respect to health, safety, the environment, and stakeholder relationships. The Supplier must keep those parts of the Site where the Services are performed clean and tidy when performing Services and must regularly remove the rubbish.
- 11.3 The Supplier shall ensure that neither the Supplier nor the goods and/or services result in or are the cause of any harm to the immediate and

surrounding environment or damage to property or harm to human health and wellbeing in and around the area(s) on the Site where it delivers the Goods and/or provides the Services.

12.1 Price:

Subject to the provisions of this Agreement, the Company shall pay any undisputed portion of the Price recorded in the Purchase Order, for all Goods and/or Services supplied under this Agreement, by the end of the calendar month following the calendar month in which a valid tax invoice is received from the Supplier. All invoices issued by the Supplier must be issued after the relevant Goods and/or Services have been provided in accordance with this Agreement and comply strictly with the Company's invoicing requirements, as well as the provisions of any applicable law.

12.1.1 Prices confirmed in the Order shall remain firm prices for the entire Contract and no variation or escalation thereof shall be permitted unless agreed between the Company and the Seller.

12.1.2 Subsequent price changes of any description by the Seller (even if arising from any alteration in execution of the Contract requested by the Company) shall only be binding on the Company with its prior written consent.

12.2 Payment:

12.2.1 the Republic of South Africa ("RSA) Contacts/ Orders

Payment shall be made by the Company, 30/60 days from the Invoice or statement date. Approved terms and conditions with Sellers will be loaded onto the Company's vendor master data.

Invoices must be sent to the Company's domicilium and must be reflected on the Seller monthly statement for payment to be affected. Failure to comply with these instructions may result in a delay in payment. The Company reserves the right to delay payment for such period as may be required for the purpose of checking the invoiced details against the actual delivery of the products covered by the contract, without incurring any interest for late payment. Input tax credits cannot be claimed by the Company without a valid tax invoice from the Seller unless the Seller has SARS approval for electronic invoicing. According, and in absence of the relevant SARS approval, the Company may withhold payment in respect of a Contract for products supplied from within the RSA, and the invoice relating thereto, until a valid tax invoice for the transformation has been received by the Company.

12.2.2 **PAYE deducted from payments:**

Where the Seller is a personal services company or labour broker, SARS legislation requires the procuring company to deduct PAYE from payment to such suppliers, in terms of this legislation, the company will deduct PAYE tax from payments to these Sellers in the absence of a valid IRP3 Tax directive from the Seller.

13. Set off:

13.1 The Company is entitled to set off against the Price any amounts owing by the Supplier to the Company, any debts and amounts due from the Supplier (subject to any exchange control approval that may apply to amounts owing or debts due in a foreign currency), whether under or in connection with the Agreement or otherwise, and any losses incurred by the Company as a consequence of the Supplier's failure to comply with this Agreement.

14. Order number, delivery note, and invoice:

14.1 The order number shall appear on all deliveries, consignment notes, and invoices, and no Products shall be accepted by the company, nor shall payment be made unless the said number is quoted.

14.2 Every consignment of Products delivered to the Company shall be accompanied by at least one Delivery note.

14.3 Invoices (which shall specify at the least, Order number, description of Products, and quantities) shall be sent to the Company after dispatch of the Products and shall under no circumstances accompany the products.

15. Intellectual Property:

The Supplier warrants that neither the supply of the Goods under this Agreement, the use (including repair and maintenance) of the Goods by the Company or the supply of any design, materials, documents, and methods of working provided by the Supplier in the performance of the Services (the 'Material') will infringe any patent, registered design, trademark or name, copyright, or other protected right of any other party. Unless the Parties agree otherwise, copyright in the Material and the concepts represented or described in the Material, vests in the Company upon creation and remains the property of the Company. If the Parties do agree otherwise, the Supplier grants to the Company a full irrevocable unconditional, perpetual, royalty-free license to use and modify that Material both during and after the term of the Agreement. The Supplier indemnifies the Company and shall hold it harmless against all Losses arising by reason of the use of the Material and supply of the Services and/or Goods, including all Losses arising from claims for actual or alleged infringement of any intellectual property rights.

15.1 By accepting the Order or performing under it, the Seller: -

15.1.1 agrees to indemnify and hold the Company, its successors, and customers against all

action at law and from all damages arising out of such actions or claims for actual or alleged direct or contributory infringement of, or inducement to infringe, any South African or foreign patent, trademark, or copyright by reason of the manufacture, use or sale of the products, including infringement arising out of compliance with Specification of Products furnished by the Company.

- 15.1.2 hereby grants to the Company a non-exclusive, royalty-free, irrevocable license to repair and have repaired, to reconstruct, and have reconstructed the Products ordered hereunder. The Seller furthermore hereby assigns to the company all right, title, and interest in any material capable of copyright and created or produced for the Company under the Contract.
- 15.2 The seller shall treat as strictly confidential the Contract and the work arising therefrom, including, but not limited to, all relevant documents, devices, tools. The samples, drawings, and other documents as well as directives given by the Company are the only standards for the kind of production and quality of the products to be supplied.
- 15.3 Should the Company require it, the Seller shall furnish a certificate of conformance with the Specification of Products in respect of the Products at or before the time of their delivery, and by furnishing such certificate, the Seller shall be deemed to have warranted the contents thereof as a material term of the Contract.
- 15.4 The Company shall (at its entire discretion) be entitled to refer a sample of the Products for expected examination and analysis so as to verify conformity with the specification of Products. In the event of the Products being found to be in conformity with the Specification of Products, the Company shall pay the costs of inspection and analysis, and in all other instances, such costs shall be for the account of the Seller.
- 15.5 The seller is obliged to notify the Company immediately if the Seller becomes aware of any potential infringement in respect of the Products supplied by the Seller, whether manufactured to drawing and models supplied by the Company or not.
- 15.6 Means of production such as dies, gauges, matrices, models, sample, tools, drawing, other documents, and the like put at the disposal of the Seller by the Company in connection with the execution of the Contract are held at the risk of the Seller, remain the property of the Company and must be returned to it after completion of the Order unless retained by the seller on behalf of the Company at the request of the Company, in which event they may not be used to manufacture any Products for any third party without the written consent of the Company, and they shall be maintained, stored and serviced in a responsible manner.

16 Liability & Indemnity:

- 16.1 The Supplier hereby indemnifies and holds the Company harmless against and from all claims,

- actions proceedings, and/or losses of whatsoever nature arising out of or in connection with any act or omission of the Supplier or the Supplier's personnel which is in connection with or arises out of this Agreement, including, without limitation, any claims, actions, proceedings and/or losses which result from the death of or injury to any person or any breach of this Agreement by the Supplier, except to the extent that such losses are solely caused by the negligence or wilful misconduct of the Company.
- 16.2 The Company shall not be liable for any claims, actions, proceedings, and/or losses against or suffered by the Supplier or the Supplier's personnel arising out of or in connection with this Agreement, except to the extent that such losses are solely caused by the negligence or wilful misconduct of the Company, and provided that the Company's liability shall not exceed the aggregate Price payable in terms of this Agreement.
- 16.3 Notwithstanding anything else contained in this Agreement, neither Party shall be liable to the other Party for any loss of profit or other special damages or any consequential or indirect loss or damages arising in terms of or in connection with this Agreement or the termination thereof or generally arising from or in connection with the performance of the obligations hereunder, except to the extent that the loss of profit, special damages and/or consequential loss or damages suffered by a Party is caused by the wilful conduct and/or negligence of the other Party.

17 Insurance:

- 17.1 During the performance of its obligations under this Agreement, the Supplier shall, at its own cost and expense, provide and maintain all such insurance cover as may be reasonably necessary to cover any losses that may possibly be suffered by the Supplier, the Supplier's personnel, the Company or any third party as a result of the Supplier's performance of its obligations in terms of this Agreement (including without limitation,
- I. Public liability insurance in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the supply of the Goods or the performance of the Services,
 - II. Insurance to cover any potential liability in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of '1993 and Regulations in relation to employees, and/or
 - III. Professional indemnity insurance in the event that the Supplier will be undertaking any engineering or design work in the course of rendering the Services); and insure the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of those Goods.

17.2 The Supplier shall ensure that the insurance cover is at all times current, and that the requisite premiums are timeously paid by it and shall provide the Company, upon request, with proof thereof.

18. Acceptance:

18.1 Within [5 (five) Business Days] after delivery of the Goods to the Site and/or rendering the Services (“Acceptance Testing Period”), the Company may notify the Supplier whether the Goods and/or Services are accepted or rejected, and if the Company fails to do so, the Goods and/or Services will be deemed accepted.

18.2 If the Goods and/or Services do not comply with the Purchase Order or the Specifications or the requirements under clause 7, the Company may reject the Goods or Services on written notice to the Supplier.

18.3 The Company’s notice of rejection must state the reasons for the rejection and may either:

18.3.1 direct the Supplier to forthwith remove the Goods at its cost and refund any amount paid in relation to them.

18.3.2 direct the Supplier to replace or rectify the Goods.

18.3.3 direct the Supplier forthwith and at its cost, to redo the whole or any part of the Services, as the case may be, so that the whole of the Services complies with the Specifications and the quality of workmanship expected; or

18.3.4 notify the Supplier that the Company elects to accept the Goods and/or Services and claim damages for the Supplier’s failure to comply with the Agreement.

18.3.5 The Supplier must comply with any direction by the Company in the rejection notice within 5 (five) Business Days of its receipt of the rejection notice.

18.3.5 Payment for the Goods and/or Services shall not constitute acceptance of Goods and/or Services that do not comply with the Agreement and shall not prevent the Company from rejecting the Goods pursuant to 0.

19. Breach, termination, and damages:

19.1 The Company shall be entitled to cancel this Agreement summarily upon the occurrence of any one of the following events:

19.1.1 If the Seller either where time is deemed to be of the essence, fails to deliver the products or to perform the services by the time specified in the Order or any extension thereof authorized by the Company in writing, or, at the Company’s discretion, it has ascertained that the Seller has failed to commence work on the Products or to make satisfactory progress thereon and in the opinion of the Company, delivery shall not be effected within the period specified in the Order, or

19.1.2 If the Seller is in breach of any of the other provisions of the Contract and fails to remedy

such breach within ten (14) days after receipt from the Company of a written notice calling upon it to do so.

Then the Company may by written notice forthwith cancel the Contract in whole or in part without prejudice to the Company's rights to recover all loss and damage which it may sustain by reason of the Seller's breach of the Contract, whether actual or consequential.

19.2 If any provisional or final order is made or any effective resolution is passed for the winding up of the Supplier; or

19.3 If the Supplier enters business rescue proceedings in terms of the Companies Act,2008; or

19.4 the Supplier ceases to conduct business; or

19.5 If the Supplier or any of the Supplier's personnel pay or give or lend or offer to pay or give or lend any money or asset or other valuable consideration of whatsoever nature to the Company or Agent or any of their directors, officers, employees, or representatives, with the intention to bribe or solicit the favour of such director, officer, employee, or representative of the Company.

19.6 The Company's remedies under this clause 19 shall not be exhaustive and each such remedy shall be in addition and without prejudice to any other remedies which the Company may have whether or not expressly provided for in this Agreement. The termination of this Agreement for any reason shall be without prejudice to any obligation by either Party to the other which shall have accrued and become owing at the time of the termination.

20. Non - compliance with the specification of products

20.1 Notwithstanding any inspection certificate or receipt that may have been issued or payment made by or on behalf of the Company either in the RSA or overseas, Product shall be accepted in accordance with applicable Incoterm (where relevant) or at the place of Delivery, only as regards qualities and outward condition of the Products, and the Company retains in use by the Company, should it be discovered that the Products are defective or that their quality, workmanship or design is insufficient or inferior to that called for in the Specification of Products or that they are otherwise not in accordance with the Contract requirement

20.2 Should the Seller deliver any Products which do not comply with the Specification of Products, the Company shall have the right to notwithstanding actual Delivery of the Products to the Company, reject them if an inspection of the Products delivered to the Company shows that they do not conform with the Specification of Products, In the event of such rejection, the affected Product shall be held at the risk and expense of the Seller who, before such Products are released, shall pay full transport costs (including full freight and insurance charges incurred and any handling, storage, delivery, and the Company shall furthermore be entitled, without prejudice to its rights in terms of clause 18.3 below:

20.2.1 To require the Seller to remove and the Seller shall be obliged to remove such Product

at the cost and expense of the Seller and failing removal of the Product by the Seller within such time as may be stipulated by the Company. To arrange for removal of the Products and the Seller shall be liable for all costs relating to such removal, including demurrage.

- 20.2.2 In its sole and absolute discretion, to require the Seller to replace and the Seller shall be obliged to replace such rejected Product with Products complying with the Specification of Products, the Seller alone being liable for all costs of and incidental to such replacement; or
- 20.2.3 In its sole and absolute discretion and upon giving notice to the Seller confirming that the defective Delivery of Products amounts to a repudiation of the Contract which has been accepted by the Company, that the Products have been rejected (“the Rejected Product”), and the Contract summarily cancelled by the Product, acquire Products complying with the Contract Specification from another source in order to replace such Rejected Products, In such event the Company shall be entitled to recover from the Seller any amount by which the price paid for Products so purchased from an alternative source (“the Replacement Products”) exceed the price payable for the Rejected products which are subsequently, upon inspection, rejected in terms of the foregoing, the Seller shall upon demand refund such purchase price to the Company as well as all other costs incurred by the Company in respect of the Rejected Products.
- 20.3 Should any dispute arise as to whether or not Products rejected in terms of clause 18.2 comply with the Specification of Products, the Seller may within seven (7) days of refusal or rejected arrange for tests and/or analyses to be undertaken by a recognised authority or body to be nominated by the Company, and the result of such tests and/or analyses shall initially be borne by the Seller, but in the event of the tests and/or analyses proving that such Products do comply with the Specification of Products, the Company shall refund to the Seller all costs incurred by it in respect of such tests and/or analyses. Should the Seller fail to arrange for such tests and/or analyses to be undertaken within the said period of seven (7) days, the Seller shall be deemed to have accepted that the Products do not comply with the Specification of Products.
- 20.4 Acceptance by the Company of any Products not complying with the Specification of Products shall not prejudice or affect the Company’s right to refuse or reject any subsequent deliveries of Products not complying with the Specification of Products.
- 20.5 In the event of any latent defects manifesting themselves in the Products which a responsible inspection of them by the Company, its employees, or agents at the time of Delivery would not have revealed, the Company shall give written notice to the Seller that it requires the Seller to replace, and the Seller shall be obliged to replace such defective Products. The Seller shall be

liable for and shall pay all costs of and incidental to such replacement. The foregoing provision of this sub-clause shall not be construed as a waiver by the Company of its common law rights in respect of latent defects. Where any Products have been replaced or defective workmanship or design remedied in terms of this clause, the same terms and conditions shall apply to the items replaced or remedied for a further 12 (twelve) month period commencing from the date of completion of such replacement or remedy.

20.6 Should any dispute arise as to whether latent defects are present in the products referred to in clause 20.5, the Seller may within (7) days of the date of receipt of the notice referred to in clause 20.5 arrange for tests and/or analyses to be undertaken, and the provisions of clause 20.3 shall mutandis apply.

20.7 Any failure on the part of the Company to invoke the provision of clause 20.5 in respect of any Products in which latent defects are present shall not prejudice or affect the Company's right to invoke the said provisions in the event of latent defects being present in any subsequent deliveries of Products. **21 Delays in delivery**

21.1 Should delivery of the Products be delayed beyond the period or date stipulated in the Contract, the Company shall without cancelling the Contract in terms of clause 19.1, be entitled.

21. 1.1 to require the Seller to effect and the Seller shall be obliged to effect delivery of the Products by means other than those stipulated in the Contract and any costs so incurred shall be for the account of the Seller, unless the failure to deliver is attributable to force majeure; or

21.1.2 to deduct from the Contract price an amount equals to 1% thereof for each completed week of delay beyond the specified time of delivery as liquidated damages, or by way of a penalty or (if agreed upon between the seller and the Company) as payment in respect of the prejudice agreed upon as being suffered by the Company as a result of such delayed Delivery; or

21.1.3 to require the Seller to effect, and the Seller shall be obliged to effect Delivery from the Seller's other sources of supply, or any other alternative sources of supply (subject to approval by the Company), failing which the Company shall be entitled, at its sole and absolute discretion, to purchase its requirements from other sources, and provided that the failure to deliver is not attributable to force majeure – the Company may recover from the Seller any amount by which the price so paid exceeds the Contract price in respect of the Products not delivered.

The cost of delivery of the product so purchased shall be considered in determining the amount of any such excess.

21.1.4 the Seller hereby indemnifies the Company against any claims by a third party,

contractors, or suppliers engaged by the Company to supply Products to the Company pursuant to clause 21.1.3

- 21.2 Acceptance by the Company of any products in respect of which delivery has been delayed beyond the period or date stated in the Contract, shall not prejudice, or affect the Company's right to implement the provisions of clause 21.1 in the event of any subsequent deliveries of Product being delayed beyond the period or date stated in the Contract.
- 21.3 The Seller shall be liable for all damages, actual or consequential, suffered by the Company as a result of delayed Delivery where time is deemed to be of the essence of the Contract.

22. Force majeure

- 22.1 Where a party (the "Affected Party") is prevented or restricted directly or indirectly from carrying out all or any its obligations under this agreement by reason of strike, lock-out, fire, explosions, floods, riot, war, accident, the act of God, embargo, legislation, shortage of or breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control of the Affected Party, the Affected Party so affected shall be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other party may suffer due to or resulting from delay or failure, provided always that written notice shall forthwith be given of any such inability to perform by the Affected Party.
- 22.2 The Affected Party shall upon the termination of any event giving rise to force majeure, forthwith give notice thereof to the other party.
- 22.3 Should such force majeure continue for a period of more than 60 (sixty) days then either party shall be entitled forthwith to cancel the Contract in respect of any obligation still to be performed hereunder.

23. Withholding Tax:

If the Company considers it necessary to satisfy its obligations under tax laws or regulations, the Company may withhold an amount from a payment made to the Supplier and pay the withheld amount directly to the Commissioner of the South African Revenue Services and that amount is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier. If the Company does not withhold an amount under this clause which it is required to withhold under the relevant income tax laws or regulations, the Supplier agrees to pay that amount (together with, if the Supplier did not provide information or assistance requested by the Company or provided incorrect information, any penalty or interest paid by the Company for failing to withhold) upon request by the Company.

24. Income Tax:

The Supplier indemnifies the Company against all losses, claims, liabilities, damage, or expense which the Company may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Agreement. For these purposes tax" includes SITE, PAYE, VAT and all other forms of duties or taxation, and any penalties or interest.

25. Assignment:

The Supplier shall not cede, assign, or transfer the Agreement or any part thereof or any rights or obligations thereof to any other person except with the consent in writing of the Company. The Company shall be entitled to cede, assign, and delegate their rights and obligations in terms of this Agreement to any other person on written notice to the Supplier

26. Chosen Domicilium Citandi et Executandi:

26.1 The Parties choose their domicilium citandi et executandi for all purposes of giving of notice, the payment of any sum, the serving of any process and for any other purpose under the Agreement, the addresses set out in the Purchase Order.

26.2 Any communication or notice required to be given or made under the Agreement shall be in writing and in English and shall be deemed to have been duly made and received, if either:

26.2.1 sent by prepaid registered post, on the 10th (tenth) day after the date of posting.

26.2.2 delivered by hand during normal business hours of the addressee, at the time of hand delivery; or

26.2.3 sent by electronic mail system; or sent by facsimile, on the date of such transmission, provided that if the transmission was done after 17h00 on a business day, it shall be deemed delivered within 4 (four) hours of the next business day.

26.3 Either of the Parties shall be entitled from time to time, by notice in writing to the other Party to vary its domicilium to any other address within the Republic of South Africa, provided that the change shall become effective on the 7th (seventh) day after the receipt of the notice.

27. Entire Agreement:

This Agreement constitutes the entire agreement between the Parties (including their successors and/or assigns), as to its subject matter and supersedes all prior representations, quotations, and agreements in connection with that subject matter. The Parties hereby specifically record that the Supplier's general terms and conditions shall not apply to the subject matter of this Agreement.

28. Survival:

Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

29. Sub-Contracting:

The Supplier shall not subcontract any part of its obligations under the Agreement other than to subcontractors approved by the Company, which approval may be withheld in the absolute discretion of the Company. The Supplier shall be responsible for the acts or defaults of any subcontractor, its agents, or employees, as if they were the acts or defaults of the Supplier.

30. Confidentiality:

Each Party acknowledges and agrees that all material and information which has or will come into its possession or knowledge in connection with this Agreement, or the performance hereof, consists of confidential and proprietary data and each Party shall hold such material and information in strictest confidence and not to release or disclose it to any other party, unless so required by law, or approved by the other Party in writing, or disclosure is necessary for the performance of its obligations under this Agreement.

31. Applicable Law:

The laws of the Republic of South Africa apply to this Agreement.

32. Jurisdiction:

If there is any dispute in relation to the provisions of this Agreement, the parties agree to the exclusive jurisdiction of the courts of South Africa, unless otherwise agreed by the Parties in writing. [Note: Do we want to do this?]

33. Waiver:

The delay or failure by either Party to exercise its rights under this Agreement shall not constitute or be deemed to be a waiver of that Party's rights.

34. Costs

Should a Party be obliged to enlist the services of legal practitioners for the purpose of enforcing its rights arising out of the Contract as a result of a default on the part of the other party (the "Defaulting Party"), Defaulting Party shall be obliged to pay all such costs and expenses of the Aggrieved Party on the scale as between attorney and client.

35. Protection Of Personal Information Act, 2013

35.1 The Seller acknowledges that the Company will require certain Personal Information as defined in the Protection of Personal Information Act, 2013 ("POPI") from Seller.

35.2 The Seller agrees that the Company requires such Personal Information for purposes of:

35.2.1 Creating a database of Sellers.

- 35.2.2 Concluding a supply contract with the Seller
 - 35.2.3 Effecting payment to the Seller
 - 35.2.4 Compiling statistical and delta reports; and
 - 35.2.5 Complying with its obligations under relevant legislation.
- 35.3 By issuing a written quotation or tender to the Company, or by completing the vendor application form (if applicable), the Seller consents to.
- 35.3.1 The Company processing the Seller's Personal Information for the purposes set out above, as applicable and
 - 35.3.2 The Company's use of third-party Operator, as defined in *POPI*, to process the Seller's Personal Information, which processing will be in line with the purpose for which it was collected, as set out above.
- 35.4 The seller's failure to supply the Personal Information requested by the Company will result in the Company being unable to place an Order with the Seller.
- 35.5 The Seller will have the right to.
- 35.5.1 access any Personal Information pertaining to it that the Company has its possession.
 - 35.5.2 rectify or correct any such Personal Information in the event that it, at any stage, becomes outdated or incorrect for whatever reason.
 - 35.5.3 request the destruction or deletion of its Personal Information by the Company.
 - 35.5.4 be informed by the Company in the event that its Personal Information has been accessed or acquired by an unauthorised person.
 - 35.5.5 object to the processing of its Personal Information by the Company on any reasonable grounds. On receipt of such objection, the Company will no longer process the Seller Personal Information, which will unfortunately result in the Seller's vendor application being denied, if applicable, and the Company being unable to place an Order with the Seller.
 - 35.5.6 object to the processing of its Personal Information at any time for purposes of direct marketing.
 - 35.5.7 to submit a complaint to the Regulator regarding an alleged interference with the protection of the Sellers Personal Information or to submit a complaint to the Regulator in respect of an adjudicator as provided for in *POPI*; and
 - 35.5.8 to institute civil proceedings regarding the alleged interference with the protection of its Personal Information as provided for in *POPI*.

Signatory page:

For: _____

Supplier Name

Designation

Authorised Signatory

Name & Surname

